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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed April 8, 1983
vs.	)	
GARY W. COOK,	)	2-439/67277
Defendant-Appellant.	)	

Appeal from Cass District Court - Glen M. McGee, Judge.

Defendant appeals from his conviction on two counts of delivery of a controlled substance for profit in violation of Iowa Code § 204.401(1) (1981). AFFIRMED.

Francis C. Hoyt, Jr., Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

Heard en banc.

DONIELSON, J.

Defendant appeals from his conviction on two counts of delivery of a controlled substance for profit in violation of Iowa Code § 204.401(1) (1981). On appeal he asserts (1) that the trial court erroneously admitted testimony that went beyond the scope of the minutes of testimony; and (2) that the evidence was insufficient to show that defendant intended to profit. We affirm.

Our scope of review is on assigned errors at law. Iowa R. App. P. 4.

I.

On two separate occasions defendant sold an undercover police agent a half-pound of marijuana for $200. The minutes of testimony indicated that the agent would testify concerning the transaction. Over objection that the testimony went beyond the scope of minutes of testimony, the agent testified on direct examination concerning conversations with defendant about the market for marijuana and other drugs in the area. Over similar objection the agent testified, on redirect examination, that the local price for half-pound marijuana varied from $180 to $240 depending on quality. With one exception defendant's objections to the testimony did not precede the agent's answers and no motion to strike the answer was made. Defendant cross-examined the agent concerning his experience and knowledge of marijuana.

The jury found defendant guilty of two counts of delivery of a controlled substance for profit. Defendant then instituted this appeal.

II.

Defendant's first contention is that the court erred in allowing the State to introduce evidence which went beyond the scope of matters contained in the minutes of testimony. With one exception, the State argues that defendant failed to preserve error with regard to the challenged testimony. The rules governing this issue were set forth in State v. Sharkey, 311 N.W.2d 68, 71 (Iowa 1981), as follows:

> Objections to evidence must be raised at the earliest time the alleged ground becomes apparent. State v. Gibb, 303 N.W.2d 673, 678 (Iowa 1981); State v. Reese, 259 N.W.2d 771, 775 (Iowa 1977); State v. Boose, 202 N.W.2d 368, 369 (Iowa 1972). When, as in the present case, an objection is late and follows the answer, a motion to strike and an application to have the objection precede the answer, or an excuse for the tardy objection, must be made in order for the objection to preserve error. State v. Taylor, 310 N.W.2d 174 (Iowa 1981); State v. Steltzer, 288 N.W.2d 557, 558 (Iowa 1980); State v. Jones, 271 N.W.2d 761, 767 (Iowa 1978); Reese, 259 N.W.2d at 775; State v. Hinkle, 229 N.W.2d 744, 748 (Iowa 1975).

In the instant case the challenged testimony concerning the market for marijuana and other drugs in the area came in response to the State's question: "Did you have any further conversations with [defendant] that evening?" It is understandable that the earliest time the grounds for the objection here became apparent was after the answer was given. However, under our rules, defendant must then move to strike and apply to have the objection precede the answer in order to preserve error. Id. Since defendant failed to do so in the instant case, his objection that the agent's testimony regarding defendant's statements about the market of other drugs was inadequate to preserve error. See also State v. Bestmann, 317 N.W.2d 847, 851 (Iowa App. 1982).

III.

Defendant also objected to the agent's testimony regarding the market value of marijuana in the area on the grounds that such testimony exceeded the scope of the matters contained in the minutes of testimony. The State concedes that error was preserved on this issue.

Iowa Rule of Criminal Procedure 5(3) "requires the prosecuting attorney to file with the trial information minutes of evidence for each witness expected to testify at trial, including a 'full and fair statement of the witness' expected testimony.'" State v. Conner, 314 N.W.2d 427, 430 (Iowa 1982). The purpose of the rule is to "assure minutes which would eliminate most claims of foul play and

would provide meaningful minutes from which a defense could be prepared." State v. Walker, 281 N.W.2d 612, 613 (Iowa 1979). In Walker, the court noted that "[i] t is not possible to formulate fixed criteria by which to determine the sufficiency of minutes." Id. at 614. However, in that case the minutes did not give the "slightest hint" of the testimony which the witness gave at trial. Id. In holding that the defendant should be afforded a new trial, the court noted that

> [m] inutes need not detail each circumstances of the testimony, but they must be sufficient—fully and fairly—to alert defendant generally to the source and nature of the evidence against him. The testimony Kehoe gave on recall concerned a matter—business records—which the state concedes it did not know about until the trial was underway. The minute did little more than identify the witness and state the conclusion that the tires in question were stolen. Under the new rules defendant is entitled to more.

Id.

In the instant case the minutes of testimony indicated that the agent would testify to the following:

> Special Agent Mike Dasso of Sioux City, Iowa, a special agent for the Division of Criminal Investigation, will testify that on October 2, 1980, he was introduced to Gary Wayne Cook in the City of Atlantic, Iowa; that Mr. Cook offered and sold Mr. Dasso one-half pound of marijuana for the purchase price of $200; that Mr. Cook at that time advised Mr. Dasso that he would be interested in doing business with him in the future; that on October 30, 1980, at approximately 11:30 p.m. he again met Gary Cook in the Alco parking lot in Atlantic, Iowa; that he again purchase one-half pound of marijuana from Mr. Cook for the purchase price of $200 at this time; that both quantities of marijuana remained in his sole care and custody until being mailed by certified mail to the Iowa Division of Criminal Investigations Laboratory in Des Moines, Iowa; that based upon his observations and experience, he is of the opinion that both quantities of what he purchased from Gary Wayne Cook are in fact marijuana.

During trial the agent testified, without objection, that he and the defendant talked about the price of the marijuana and that defendant originally requested $230. The agent further testified that, because they talked about doing additional

business in the future, defendant reduced the purchase price to $200, which was the amount actually paid to defendant. When the agent was later asked if he was acquainted with the cost of marijuana in the area, the agent responded, over objection, that "[i] t was a little high at the purchase price, the price I acquired the marijuana at. Two hundred and twenty dollars is very high. One hundred and eighty dollars, in that vicinity, for that kind of marijuana would be correct." The court ruled this testimony admissible because "it pertain[ed] to his previous testimony." We believe the trial court was correct and that the agent's answer did not exceed the matters contained in the minutes of testimony. The minutes clearly indicate that the agent and defendant talked about doing business in the future and that they agreed on the purchase price of $200. While the minutes did not "detail each circumstance of the testimony," we believe it was sufficient to fully and fairly "alert defendant to the source and nature of the evidence against him," see Walker, 281 N.W.2d at 614; namely, that the agent secured a lower price than average because of the intent to do further business with defendant in the future. The testimony objected to relates directly to the reasonableness of the purchase price in the area under the specific circumstances. We believe the minutes alerted defendant that part of the evidence against him would include testimony regarding the $200 purchase price and that the source of the testimony would be the purchaser, the special agent.

This case is thus distinguishable from State v. Olsen, 293 N.W.2d 216, 220 (Iowa 1980), cert. den., 449 U.S. 993, 101 S. Ct. 530, 66 L. Ed. 2d 290 (1980), where an officer testified concerning methods of packaging and distributing marijuana when the minutes of testimony indicated only that he had helped process the evidence against defendant by tagging and numbering packages of marijuana and transported them to the lab for analysis; and State v. Olsen, 315 N.W.2d 1, 3 (Iowa 1982), where a police officer was allowed to testify "as an expert witness" on the

packaging, distributing, and selling of marijuana even though the minutes indicated only that he was a police officer and evidence custodian and that he "removed all of the items marked with defendant's name" and mailed them to the lab for analysis. In both of the Olsen cases the State acknowledged that the trial court violated rule 5(3) by allowing such testimony. Unlike this case, both witnesses in the Olsen cases testified as to matters which the defendant would not have been alerted to by the minutes of testimony. We find no violation of rule 5(3) in the admission of the agent's testimony in the instant case and, therefore, affirm the trial court on this issue.

IV.

Finally, the defendant contends the trial court erred in overruling his motion for a directed verdict because there was insufficient evidence from which a rational trier of fact could conclude beyond a reasonable doubt that the defendant was guilty of the delivery of a controlled substance for profit. The standard of review governing this type of challenge is set forth in State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981);

> In reviewing a motion for a directed verdict based upon insufficiency of the evidence in a criminal case, we view the evidence in a light most favorable to the State. All of the evidence must be considered, State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980), and all legitimate inferences that may be deducted therefrom will be accepted. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). A trial court's refusal to direct a verdict for a defendant will withstand challenge if there is any substantial evidence in the record tending to support the charge. State v. York, 256 N.W.2d 922, 927 (Iowa 1977). Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Robinson, 288 N.W.2d at 339.

Applying these standards, we hold that the evidence is sufficient to support the jury's guilty verdict.

We have thoroughly examined all of defendant's contentions and, finding no reversible error, we affirm the judgment of the trial court.

AFFIRMED.